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# Situation of human rights in Burundi

## Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the interim report on the human rights situation in Burundi which the Special Rapporteur on the situation of human rights in Burundi, Marie-Thérèse A. Keita-Bocoum has prepared pursuant to Commission on Human Rights resolution 2001/21 of 20 April 2001 and Economic and Social Council decision 2001/256 of 24 July 2001.

* In conformity with section III, paragraph 10, of General Assembly resolution 55/222, this report is being submitted on 17 September 2001 so that it will contain as much updated information as possible.

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# Annex

## Interim report of the Special Rapporteur of the Commission on Human Rights on the human rights situation in Burundi

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# I. Introduction

1. In accordance with resolution 2001/21, adopted by the Commission on Human Rights at its fifty-seventh session, on 20 April 2001, the mandate of the Special Rapporteur on the human rights situation in Burundi was extended by one year and its gender-specific dimension was maintained. This interim report, covering the period from 1 February to 31 August 2001, is being submitted to the General Assembly under that mandate. It is based on the fourth mission to Burundi carried out by the Special Rapporteur from 5 to 14 July 2001.

2. During this second visit, the Special Rapporteur had the opportunity to meet representatives of the diplomatic corps, the heads of United Nations agencies in Burundi and representatives of civil society, including members of women's associations, trade unions, youth groups and human rights organizations, and representatives of universities and religious communities.

3. In Butezi, Ruyigi province, the Special Rapporteur visited the displaced persons' camp, the prison and the Shalom House for disadvantaged children and those orphaned by war and HIV/AIDS. She visited households headed by children in that town. She also held talks with the governor of the province, the deputy attorney-general and the bishop of Ruyigi. In Bujumbura-Mairie she visited the Kinama district, the scene of violent clashes last February between armed groups and the military.

4. The Special Rapporteur thanks the President of Burundi and all the leaders that she met, who, through their availability and assistance, enabled her to carry out this mission. She wishes to congratulate the Director of the Office of the United Nations High Commissioner for Human Rights in Burundi (OHCDHB) and his entire team for the efforts made to prepare for and ensure the success of her mission and to express all her gratitude to them for the attention that they had accorded to her throughout her stay.

5. The mission took place at a time of significant developments with regard to the Arusha Agreement on Peace and Reconciliation in Burundi. The Special Rapporteur was informed in an objective manner about recent developments in the general situation in Burundi, the human rights situation and, in particular, the situation of women and children. In this interim report to the General Assembly, she will give an account of those changes and the observations and recommendations that derive from them.

# II. General situation

6. The general situation concerns the political situation, with which developments in the peace process and the economic and social situation are linked.

## A. Political situation

7. The political situation continues to be influenced by the climate of widespread insecurity which affects all the provinces to a greater or lesser degree, with the exception of the northern province of Ngozi. Note should be taken, moreover, of the interruption of transport and fishing on Lake Tanganyika and of a lack of security owing to the permeability of the borders with the Democratic Republic of the Congo and the United Republic of Tanzania. Indeed, armed violence has increased since the Special Rapporteur's previous visit, although a relative calm has prevailed since June, particularly around the capital. Nevertheless, one year after the signing of the Arusha Agreement, it cannot be said that the war in Burundi has diminished in intensity, despite the fact that tensions between the various political actors sometimes appear to be less pronounced. Overall, there has been little change in the security landscape, and Bujumbura-rural, Makamba and Rutana remain the areas of conflict and high risk.

8. On 10 January 2001, the President of Burundi, Pierre Buyoya, held a meeting in Libreville with the leader of the rebel group Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD), Jean-Bosco Ndayikengurukiye, on the initiative of President Omar Bongo of Gabon and in the presence of the late Congolese President Laurent-Désiré Kabila. This surprise meeting was assessed in various ways by Burundian political actors and observers.

9. During the first two weeks of March 2001, the Kinama district in the northern part of the capital was the scene of heavy fighting between the national armed forces and the armed rebels of the Forces nationales pour la libération (FNL). The government forces put down the rebellion at the cost of dozens of dead and

injured, thousands of persons displaced, and houses, schools and clinics destroyed. This huge FNL offensive took place in the wake of serious dissension within the principal armed group, which led to the ouster of its historic leader, Kabura Cossan, and his replacement by his chief deputy, Agaton Rwasa, who was viewed as more radical.

10. The clashes between soldiers and rebel groups in Bujumbura-rural, in the central, southern and eastern parts of the country, intensified throughout the month of March, notably in the provinces of Makamba, Rutana and Bujumbura-rural. These territories are reported to be under the control of the army during the day, while at night the armed groups hold sway. The Special Rapporteur was informed of a change in the conduct of the belligerents towards the civilian population, in that civilians allegedly are targeted only when they are being punished for any collaboration with the rebels or the military. Nevertheless, the population continues to suffer from forced displacement in the combat zones and from looting in the areas near the Tanzanian border. This latest fighting drew the attention of the Secretary-General and of the Security Council, both of whom vigorously condemned the attacks and called for their immediate cessation.

11. New insecure areas were created following attacks by FNL and FDD rebels in the provinces bordering on the Democratic Republic of the Congo and the Kabira forest, in addition to rebel activities in Bujumbura-rural, Mwaro, Bururi, Makamba, Cankuzo and Rutana.

12. The increase in the number of recruits and in the number and quality of weapons on both sides confirmed that the positions of the belligerents had hardened. Recruitment has been stepped up through the use of younger and younger soldiers and the formation of militias, whose members, as the Special Rapporteur was able to observe in Butezi, often appear to be under 18 years of age. Self-defence and the arming of civilians have expanded. In this new stage of the conflict, the Burundian armed forces seem to be gaining the upper hand, but there is no way to tell which of the parties will prevail over the other.

13. The Burundian Government has taken a number of steps to fortify or expand its security system. A solidarity fund was established to meet the security costs. Moreover, the civilian self-defence policy encouraged by the Government, which has enabled civilians to be trained in weapons handling, has spread to most of the northern, southern, eastern and central provinces. In some provincial localities, armed civilians, generally selected among youths ranging from 14 to 25 years of age, are virtually organized into militias under the orders of the local government and even the military administration. They are used as scouts or porters and are either former rebels or rural youths. Mention has been made of the numerous abuses and acts of extortion committed by these militias. The Special Rapporteur has learned that these vigilantes have a tendency to exact payment from civilians, whom they often subject to fines or forced contributions.

14. On 18 April 2001, there was an attempted coup d'état led by a group of young officers belonging to the Gatumba (Bujumbura) military garrison, at the very moment when the Head of State was holding an official meeting in Libreville, with the FDD leader, under the auspices of Gabonese President Omar Bongo and with the participation of South African Vice-President Jacob Zuma. A judicial commission of enquiry was established by the Government several days after the events to clarify the circumstances surrounding them. This coup attempt, in addition to other events, such as the arrests of political leaders and the paralysis in decision-making at the political, economic and judicial levels, heightens the impression of instability.

15. The political situation in Burundi is also closely linked to that of the countries in the Great Lakes region, and it seems clear that the unfolding crises in those countries will no doubt have an impact on Burundi. Indeed, there has been an ongoing "interlocking" of the various countries of the Great Lakes region in the internal conflicts convulsing them, making the problem of the permeability of borders a constant source of insecurity. It seems that the implementation of the Lusaka agreements prompted many of the armed groups to move to the eastern part of the Democratic Republic of the Congo, Burundi and the United Republic of Tanzania.

16. The situation on the Tanzanian border is being undermined by violations on both sides. It is reported that rebels from the United Republic of Tanzania crossed the border to steal cows from Burundi and that Burundian soldiers went into the United Republic of Tanzania to recover those cows. Subsequently, the soldiers were given instructions to avoid yielding to provocations.

## B. Developments in the peace process

17. There were no significant developments in the peace process between January and July 2001. Many bilateral and multilateral meetings were held in order to move forward with implementation of the measures that had been taken, especially on two key issues: leadership during the transition and the ceasefire. However, they did not lead to any major changes.

18. A large Security Council mission visited Burundi on 23 May 2001. This delegation, which consisted of 12 ambassadors and was headed by the French ambassador, Jean-David Levitte, held meetings with the country's most senior officials, including the Head of State. The mission also met with all signatory parties to the Arusha Agreement.

19. Furthermore, on 15 May 2001, in implementation of the Peace Agreement, the Head of State appointed a technical commission responsible for drafting the legislation envisaged in the Arusha Agreement. This commission, headed by the Minister of Human Rights, Institutional Reform and Relations with the National Assembly, has 10 members.

20. On 10 July 2001, in Pretoria, the stalemate which had characterized the peace process since January was broken by an announcement of proposals by the Facilitator, Nelson Mandela. The proposals met with varied reactions from politicians, armed groups and representatives of civil society. According to this plan, the presidency will be held by current-President Buyoya, representing the pro-Tutsi G-10 group, and the Vice-Presidency by Domitien Ndayizeye, representing the pro-Hutu G-7 group during the first part of the transition. The plan was adopted at the regional summit held on 26 February 2001 in Arusha, which also addressed the issue of declaring a ceasefire in Burundi. During the summit, the Facilitator proposed a 36-month transitional period divided into two equal 18-month parts. During the first part, the President would be a representative of the G-10 and the Vice-President a representative of the G-7. The latter would occupy the presidency during the second part of the transition while the Vice-President would be a G-10 representative and the remainder of the Government would be constituted in accordance with the Agreement. The summit and the 19 parties had accepted the Facilitator's proposal. This decision has the advantage of establishing the leadership during the transition, an issue which posed a threat to the political situation. However, it is not clear from subsequent reactions whether it constitutes a decisive step towards peace. Most political figures still see no solution to the ceasefire problem, and the opposition thus far displayed by certain political parties is a source of concern.

21. The heads of State of the Regional Peace Initiative for Burundi adopted Nelson Mandela's proposals on 23 July 2001 in Arusha. President Buyoya and Domitien Ndayizeye accepted and signed a document containing 11 conditions attached to them. That same day, there was an attempted coup d'état, the second of its kind, which strengthened the already obvious sense of political instability.

22. The transition was scheduled to begin on 1 November 2001, leaving three months in which to settle matters relating to its implementation. There are several remaining issues, including dismantlement of the army, the transitional institutions and draft Constitution, the use of foreign troops and provisional immunity.

## C. Economic and social situation

23. Economically and socially, Burundi is among the world's three poorest countries. This situation is a result of the war, insecurity and political instability which hinder development. The human rights situation in Burundi is influenced by the constant worsening of economic and social conditions. Poverty has worsened during recent months despite the Government's efforts to combat corruption, fraud and misappropriation of funds. The latest harvest was a good one but, although there was sufficient rainfall during the growing season, the effects of the previous years of drought are still being felt. Consequently, food aid projects had to be implemented and in April 2001, some 60,000 households (approximately 300,000 of the 1 million people at risk of malnutrition) received emergency food rations.

24. Several projects sponsored by the international community are under way or planned, but their implementation is contingent upon the security situation which, at present, is considered detrimental to full implementation of the commitments made by donors at the Paris Conference in December 2000; most of the donor funding granted with a view to boosting economic activity in Burundi has yet to be

released. There is general agreement on the economic assistance to be provided to Burundi but, for the present, the support provided is insufficient to spur significant economic development.

25. The economic situation observed during the month of July seems marked by greater contrasts than was the case in January. The emergency loan from the World Bank and the funds provided by the European Union through the Stabilization Scheme for Export Earnings (STABEX) have been exhausted. Without currency, the economy is in trouble. Several companies and industries have declared bankruptcy and many workers are jobless. On 1 July 2001, the thirty-ninth anniversary of independence, the President of Burundi announced a 10 per cent wage increase for civil servants.

26. As a result of the civil war, the impact thereof and the resulting State dysfunction, disputes over land have worsened considerably in Burundi, where 85 to 90 per cent of the population supports itself through agriculture. The Tribunaux de résidence have always been inundated with such disputes, but the problem of massive population displacement, growing poverty and the anticipated return of the refugees have increased the competition for control of the land. These disputes over land do not necessarily mask a split between ethnic groups, but they could serve to spark social and inter-ethnic violence, particularly once the refugees return. Several ministries are involved in land management, but there does not appear to be any overall land management policy, despite the fact that a combination of unfavourable political, economic and social factors has made coordination in that area urgent for the past eight years.

# III. Human rights situation

27. The main human rights violations concern the right to life, to physical integrity and to personal freedom and security. In addition, there are continued violations of the right to freedom of movement and to the freedom to choose one's residence, particularly in the southern and south-eastern provinces, where a portion of the population is still seeking refuge in the neighbouring United Republic of Tanzania. Freedom of opinion and of expression remain an unfulfilled dream for some people or groups and in the great majority of secondary detention centres, overcrowding, ill-treatment and illegal arrest and detention are becoming increasingly common; some people are even held in inappropriate locations such as military or other camps. Similarly, respect for the rights of women and of the most vulnerable groups, including children, are considered of secondary importance; the same is true of economic, social and cultural rights.

28. The civilian population is the primary victim of such violations and women, children and older persons are the most affected. However, thanks to the efforts of the Government, civil society and the international community, there has been considerable improvement in certain sectors; this is proof that many of the parties involved have the will to end this vicious circle.

## A. Civil and political rights

### 1. Violations of the right to life

29. There have been numerous attacks by armed groups followed by strong reactions by the army. The Special Rapporteur has received reports of acts of violence by armed groups and by agents of the State, mostly affecting the civilian population. The crisis also encourages acts of banditry and attacks committed by unidentified persons.

30. In February 2001, the security situation deteriorated seriously and this had repercussions on the human rights situation. For example, the Buterere and Kinama areas were attacked by rebel groups. The bloody clashes in Kinama were a harrowing example and were followed by many others. Several provinces, including Makamba, Ruyigi, Rutana, Bururi, Gitega, Cankuzo and Bujumbura-rural, have seen fighting between rebel groups and the armed forces and there have been many reports of ambushes on the highways.

31. At Kivoga and Tenga in Bujumbura-rural province, the situation relating to mines is increasingly acute. Innocent people have stepped on mines in the area. Some have been killed, others have had their legs amputated.

32. In January and February 2001, most violations of the right to life were committed by armed rebels mainly operating in the south and east of the country and in Bujumbura-rural, and the armed forces reacted violently to these incidents. In March 2001, the rebels stepped up their attacks and fighting with elements of the Government army increased in several provinces

and in the city of Bujumbura; as a result, violations of the right to life increased.

33. The Special Rapporteur's last days in Burundi were marked by a violent attack by the armed forces upon the population in Kanyosha commune. This action, which seemed to be reprisals by members of the forces after one of them had been killed, led to a large but indeterminate number of civilian deaths. When contacted by the Special Rapporteur, the authorities put the death toll at eight, whereas unofficial sources put the figure at several dozen.

34. Violations of the right to life were mostly massacres of civilians carried out by agents of the State and known and unknown armed groups, and attacks upon *collines* or sites for displaced or regrouped persons. Private homes and government and socio-economic infrastructure were destroyed while ambushes and murders were perpetrated on the highways. Such violations were often accompanied by rape and plunder.

**Violations attributed to agents of the State**

35. On 2 January 2001, in Mutimbuzi commune in the area of Gasenyi, a mine reportedly killed one person and wounded two others, who underwent leg amputations. Local officials contacted by OHCDHB said that the army was laying mines because of the strong rebel presence in the area.

36. On 15 February 2001, a man from Kayanza, whose first name was Matayo, was allegedly arrested in Mugina by a police officer of the commune for not carrying identity documents; he died as a result of brutal treatment. On 25 February 2001, a man named Fulgence was allegedly killed in the neighbourhood of Gitega, in Kinama, by members of the armed forces who suspected him of being a member of the rebel movement.

37. On 7 March 2001, a man named Jean-Marie, alias Rupipi, was reportedly killed by gendarmes in the neighbourhood of Gitega, in Kinama. On 15 March 2001, two members of the armed forces and one civilian are reported to have robbed and killed a man named Kakumba, of Congolese origin, at his home. On 19 March 2001, a man named Bizimana was killed by members of the armed forces in the Kirekura area after he had supposedly refused to show them an arms cache. On 30 March 2001, Gabriel Kabura died as a result of torture brutality inflicted upon him when he was arrested and detained illegally at the police station in the commune of Matana. On 20 March 2001, at Kinyinya in the area of Rukaramu, a woman and her three children aged five years, three years and four months were allegedly machine-gunned by a soldier from the Gakumbu army camp. The mother and the three-year-old child died, and the five-year-old child and the four-month-old baby were wounded. The Special Rapporteur requests that this case be thoroughly investigated; the right to life is the most fundamental of all, and violations of that right are even more appalling when the victims are children or babies.

38. On 10 April 2001, in the Rubirizi area, in Mutimbuzi commune, members of the armed forces killed between 20 and 35 people. The exact circumstances of this incident are unknown.

**Violence attributed to rebel groups**

39. During the night of 7/8 January 2001, three persons were allegedly killed during an attack by a group of armed rebels upon the *colline* of Murango (Bururi commune, Bururi province). On 22 January 2001, a group of armed rebels attacked the commune of Mpinga-Kayove in Nyakabanda, Rutana province, stealing cows and killing three civilians. On 28 January 2001, also in Rutana province, a minibus was ambushed by a group of armed rebels; a tradesman was killed and five others were robbed of their goods, but the lives of the remaining passengers were saved when the military intervened. On the same day, a civilian was killed and three others kidnapped during an attack by night in the centre of Kayogoro. The rebels also stole about 30 cows.

40. In the course of February 2001, 16 people were reportedly killed and 10 others wounded in the provinces of Bururi, Muramvya, Bujumbura-rural and Bujumbura-Mairie.

41. During the battle of Kinama, which lasted until about 10 March 2001, rebel fighters of the Forces nationales pour la libération (FNL) are alleged to have deliberately fired shells at the nearby areas of Ngagara and Cibitoke and at the university campus at Kiriri, killing two civilians, wounding several others and causing considerable material damage. Eight other persons were reported to have been killed by the rebels in March in the provinces of Makamba and Bujumbura-rural.

42. During the night of 25/26 April 2001, armed rebels reportedly murdered the administrator of Gisagara commune Cankuzo province, and his entire family. Five civilians were also killed by rebels on 21 April 2001 in Cankuzo commune.

43. In May, rebels reportedly killed 50 people and wounded 21 others, including women and children, in various attacks and ambushes. The victims included members of the armed forces, civil servants and persons whose attackers believed them to be working with the administration.

44. All these attacks were accompanied by looting, thefts and sometimes kidnappings of young girls.

**Acts of violence by persons unknown**

45. During the night of 8/9 January 2001, armed men attacked the Kinama area in Bujumbura-Mairie and shot and killed three persons. The attackers also allegedly looted houses and shops and kidnapped five persons.

46. On 19 January 2001, three civilians were reportedly killed by mines which had been laid on paths in the area of the Kibira forest. On 22 January 2001, a grenade exploded in a displaced persons' camp in the Kanyosha area in Bujumbura-Mairie, killing one person and wounding five others.

47. During the night of 5/6 February 2001, in Bubanza commune, Bubanza province, unidentified persons are reported to have attacked the technical secondary school and killed two persons, one of whom was a student. Two other persons reportedly died in a similar incident.

48. During the night of 21/22 May 2001, four persons were reportedly killed and 16 others wounded during a military operation in the Tenga-Nyabuyegeri sector. On the previous day, two people riding in a van had been robbed and killed by unidentified attackers.

**2. Violations of the right to personal freedom and security**

49. Several provisions of the new Code of Criminal Procedure are regularly violated, including those relating to police custody and the legally permissible period of pre-trial detention, including in the *cachots*. Despite the provisions of the Code, which state that a person may not be held in custody for more than seven days, unless the Public Prosecutor's office specifically decides to extend the time limit in which case the person may be held for up to twice as long, some detainees can spend several months, if not years, in certain *cachots*. The Special Rapporteur was informed that, notwithstanding the rules of criminal procedure, there were illegal places of detention, including in the military camps, primarily in the areas of insecurity.

50. The Special Rapporteur was informed of the arrest and detention of Sever Nkurikiye and a certain Marguerite at the *cachot* of Bukeye commune in Muramvya province. According to their families, it was the fourth time they had been arrested over a land dispute. The two women are reported to have disappeared following their arrest on 9 February 2001 by gendarmes and members of the military at the instigation of judicial police officers of Bukeye.

51. Nzoronka Aloïs, a health inspector from the Kanyosha area, is said to have been arrested on Saturday 17 March 2001 by gendarmes without an arrest warrant. His family was not allowed to visit him during his detention at the brigade of Kanyosha. According to other reports received, he was tortured.

52. Irakoze Haruna has been detained illegally since June 2000 at the Mwaro military camp. When asked about the matter, the Governmental Commission confirmed that he was being detained at the Mwaro camp. The Special Rapporteur denounces the fact that someone has been held in a military camp — and for 11 months at that — without any investigation being conducted, even though that town has both a prosecution service and a gendarmerie brigade. She therefore demands that Irakoze should be handed over either to the prosecution service or to the gendarmerie for investigation.

53. Ndabarushima Fundi, a 21-year-old resident of the Mubone neighbourhood in the Buterere area, is alleged to have been arrested illegally on 18 March 2001 and then handed over to the military.

54. Pie Masumbuko, a former Burundian Minister, former senior United Nations official and Consul of Burundi in Abidjan, was arrested on 30 March 2001 and detained at the Special Investigations Brigade without being given any reason for his arrest. He was released in the evening but was due to report back the following day for interrogation; he himself informed OHCDHB of his release. Instead of going to the Special Brigade, he sought refuge on the premises of OHCDHB, where Diomède Rutamucero, Chairman of

Puissance d'autodéfense (PA)-Amasekanya, had already been staying for several weeks. Mr. Masumbuko left the Office on Sunday 1 April 2001 after meeting with the Chairman of the Governmental Commission on Human Rights. On 31 March 2001, another opponent of the Government, Alphonse Rugambarara, spokesman of the G-6, was detained by the police when he was leaving a press conference. He was immediately incarcerated at the Mpimba prison on the strength of an arrest warrant issued by the State Public Prosecutor. He is said to have been charged with insulting the Head of State.

55. According to reports, Ntakarutimana Léonidas, aged 18, was arrested 13 December 2000 and has been detained since then. After spending three months in a military camp, he was transferred to the gendarmerie unit of Gatoke. According to his family, he was abducted by rebels from whom he escaped before being arrested by members of the military, who are reported to have reproached him for not reporting to the authorities afterwards.

56. Hakizimana Yasser, aged 22, and a certain Nono are said to have disappeared following their arrest by the market "commissioner" on 14 April 2001 at the Ruvumera market at Buyenzi, probably for theft.

57. The case of Cegetara Audence, a resident of Rutana province, who had already been arrested in 1996 and prosecuted for participating in the 1993 massacres, was brought to the Special Rapporteur's attention. After spending two years in prison, he was released on 30 November 1998 due to lack of evidence. Cegetara Audence is reported to have been illegally arrested again on the same charges and held at the gendarmerie brigade of Gihofi. Such cases seem to be quite frequent. Thus, during her visit to Ruyigi, the Special Rapporteur found other nearly identical cases that she brought to the attention of the Public Prosecutor, who immediately took steps to conduct investigations and have the detainees concerned released.

58. It would appear that on 29 April 2001, two civilian vehicles belonging to the Société Théicole de Taza were attacked by rebel groups. The two vehicles are reported to have been burned and their drivers abducted.

59. On 11 May 2001, a group of rebels probably belonging to the Forces pour la défense de la démocratie (FDD) reportedly abducted six staff members of the non-governmental organization MEMISA-COPED, who were on a humanitarian mission to the commune of Kibago in Makamba province. According to a number of corroborating sources, they were held at a refugee camp in the Kigama area of the United Republic of Tanzania. They were later released.

### 3. Violations of physical integrity

#### Torture and ill-treatment

60. Cases of torture in the *cachots* of the different police units as well as in the clandestine places of detention were reported to the Special Rapporteur. Armed groups are also alleged to practice torture. These violations are so widespread that a league against torture has been established and awareness-raising campaigns have been organized by civil society to combat them. During the seminar against torture organized by the Association burundaise pour la défense des droits des prisonniers (ABDP) and OHCDHB, many cases of torture were reported. No action was taken on the majority of complaints of torture.

61. On 8 January 2001, during a visit to the *cachot* of the Special Investigations Brigade, the OHCDHB observers noticed traces of torture on the bodies of Nsabimana Pascal and Nahishaka Isaac, who said they had been tortured by members of the judicial police during interrogation. They were reportedly forced to kneel on beer caps.

62. Jean Rufuente, a militant of the Association burundaise de lutte contre le génocide, is reported to have been held in the *cachots* of the National Registry from 24 to 31 January 2001, under atrocious conditions. To secure his release, he had to pay a fine of FBu 30,000 for insulting the Head of State. In such cases, all the national and international norms concerning arrest and detention should be observed.

63. The Special Rapporteur was informed that Michel Manirakiza, who was arrested on 8 March 2001 and has been held since then at the Kanyosha brigade, had been reportedly tortured.

64. Marc Baradumbwa lodged a complaint against officer Firmin Biraho of the judicial police prosecution service of Ngozi, who is alleged to have tortured him. Several proven cases of torture involving that officer had been reported to OHCDHB. According to some

reports, that officer also tortured a detainee to death while stationed at Kayanza and was transferred to Ngozi as punishment. OHCDHB raised the matter with the Governor and Public Prosecutor of the Ngozi Court of Appeal, but to no avail. The Special Rapporteur requests that an investigation be opened into the behaviour of that officer.

65. The case of Paul Nsanzurwimo, Director of administrative and financial affairs at the Jabé Centre for Handicapped Youth, was brought to the attention of the Special Rapporteur. According to reports, he and his brother-in-law, Emile Masabo, were arrested on 16 March 2001 and illegally detained by members of the military, who subjected them to cruel, inhuman and degrading treatment.

66. Nkurunziza Méthode is reported to have died on 21 March 2001 at Gitega hospital as a result of the serious torture to which he was subjected during his detention in the *cachot* of the Gitega special police of the prosecution services. The fact that the judicial authorities acknowledge that Nkurunziza Méthode was in good health when he was taken into police custody confirms the suspicions that he did not die a natural death.

67. Thierry Mutoré is reported to have been arrested and detained illegally by the special police of the prosecution services of Bujumbura-Mairie for stealing money. According to his family, he was subjected to ill-treatment during his interrogation. The judicial police officer responsible for the matter, who is well known for such practices, did not deny the facts.

68. Torturers enjoy impunity; the punishment for torture, which according to the Code of Criminal Procedure is on a par with the offence of deliberate assault and battery, is not sufficient. No provision has been made for compensating the victims of torture.

69. Several cases of rape have been reported in Kinama, in Bujumbura-Mairie (12 since April 2001, including four in the district of Bubanza and three in Muyinga). During her visit to Kinama, the Special Rapporteur was informed by the Kinama women's association that several women had been raped during the events of Kinama in February and March 2001. In its annual report on the human rights situation,[1] ITEKA referred to 93 appeals in rape cases that had been brought before the regional courts of Burundi during the course of the year.

70. Cases of rape, including the rape of girls, have been reported, particularly in the stricken areas. Other rapes are committed by armed bands on women captured during attacks. Unfortunately, many cases are not brought to trial. The laws of Burundi provide for 10 to 20 years' imprisonment for rape, or even more if there are aggravating circumstances. Most often, however, the guilty go unpunished. No doubt social and other pressures explain the fact that victims or their parents often accept out-of-court settlements.

### 4. Internally displaced persons

71. The total number of internally displaced persons is estimated at 500,000. Of these, 379,000, half of them children, are distributed in 210 different locations. To these figures must be added 200,000 persons who did not return home after the regroupment camps were dismantled, for reasons relating to security concerns and health care. Most of these people are in the southern and south-eastern provinces. These regions are very remote, which gives rise to concern about the living conditions of the people who have gone there. In some cases, insecurity in the *collines* has forced the people to remain where they are. Living conditions are difficult, especially for widows, older women and the many children, who often live in an intolerably precarious state, suffering from disease, malnutrition and the cold. Managing these sites is a challenge to the international community.

72. People have been displaced as a result of the large-scale operations conducted by FNL rebels and of the confrontations between the military and rebel groups, such as those which occurred in Kinama, Bujumbura-Mairie (approximately 54,000 were displaced) in February and March 2001, and the acts of violence committed by rebels in Ruyigi province in April and in Muzinda in May 2001 and by the military in Kanyosha (around 5,000) in July 2001. In Kinama, the displaced persons, who were absolutely destitute, were distributed among four different sites. The Special Rapporteur visited these locations and was able to assess the extent of the damage. Houses, stores, health centres, schools, the market and a church where the rebels had taken refuge were completely destroyed by submachine-guns and shells.

73. An ad hoc group which includes OHCDHB was set up to assess the situation of displaced persons in Kinama.

74. The Special Rapporteur was informed of the human rights situation in the displaced persons camp in Gihangwe (Bubanza province) which she had visited during her previous mission. It was reported that the lieutenant in charge of the military post at the camp and his men had been conducting racketeering operations involving the people in the camp. On Saturday 7 April 2001, a resident of the camp named Mayogoro was killed, in front of his family and other displaced persons, by a member of the military post named Kayitare; this was done on the orders of Lt. Banteyamanga, the chief. No one has been punished.

75. In addition, the displaced persons allegedly endure many acts of violence and are subjected to forced labour by the military. Some are said to be planning to leave the camp in order to escape the abuse. The Ministry of Defence should take strong action to put a halt to these practices, and an enquiry into the murder should be opened.

76. In the provinces where the rebels are in control, the people still do not have free access to their fields. This could eventually lead to famine and malnutrition.

77. On 7 February 2001, the Minister of Human Rights and the representative for humanitarian action signed an agreement on the protection of displaced persons. However, given the escalation of attacks on humanitarian personnel and the growing insecurity, consideration should be given to taking steps to protect the staff, by guarding vehicles and reinforcing escorts.

### 5. The refugee situation

78. A total of 406,294 Burundian refugees have been assisted by the United Nations High Commissioner for Refugees (UNHCR). Most of these are in the United Republic of Tanzania, but some are in the Democratic Republic of the Congo, Rwanda and Zambia. To these must be added 200,000 refugees from the 1970s, who have become partially integrated in the United Republic of Tanzania. In April 2001, 8,418 of these refugees returned on their own initiative. Burundi has 28,277 refugees from neighbouring countries, mostly the Democratic Republic of the Congo. Implementation of the Lusaka and Arusha Agreements could lead to a massive return of refugees, which would test the plans for action and strain resources for implementation.

### 6. Freedom of movement and freedom to choose one's residence

79. On 12 February 2001, OHCHR met at the Special Investigations Brigade (BSR) with Anna Cécile, Asbawa Usmani, Lutanda Mayembe, Mateso Albert, Chindano Issouf, Birange Justin, Ngoma Francois and Mpoyo Idi Bili, eight Congolese refugees who had been arrested the week before and who belong to the Mouvement national congolais-Lumumba (MNC/L). The BSR Commander had asked them to sign, as a condition for their release, a statement whereby they would undertake to refrain from political activity in Burundi. They had refused to sign. On 13 February 2001, five of them were expelled to Uvira, an area controlled by the Congolese rebels, where their lives would be at risk. The other three were to follow two days later. This expulsion is surprising, given that these individuals could have been brought before the prosecution service in Bujumbura, tried, and if found guilty, sentenced and jailed, since they had committed offences in Burundi. Their expulsion was in violation of existing domestic and international rules on the matter.

80. In May 2001, three of these men were re-arrested in front of the International Committee of the Red Cross (ICRC) offices. They were detained illegally at the public security police *cachot* in Bujumbura. This action by the Government of Burundi is inconsistent with article 3 of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which it has ratified. This Convention stipulates that a refugee shall not be forcibly expelled to a country where his/her life, physical integrity or freedom would be in danger.

81. On 25 May 2001, another 105 Congolese nationals were expelled to the Congolese border by the administration of Rumonge. They were not allowed to take their belongings with them and no consideration was given to the fact that expulsion might put their lives at risk.

### 7. Violations of freedom of opinion and expression and of assembly

82. The media have encountered many problems, including difficulty of access to information, censorship and intimidation. A reporter for Radio Publique Africaine was beaten, and Jean Pierre Harerimana, of Reuter's, was harassed by police.

Gabriel Nikundana and Abbas Buzumutima, two reporters for Bonesha, a private radio station, were arrested on charges of sympathizing with the enemy following an interview in March 2001 with the FNL spokesman. They were released a few days later, on Friday 16 March 2001, after paying a fine of FBu 100,000. The arrest of M. Nikundana is illegal, as it constitutes a violation of the Code of Criminal Procedure, the decree-law on the press and article 19, paragraph 2 of the International Covenant on Civil and Political Rights.[2] The Special Rapporteur requests authorities to respect the work of the media so long as it is in compliance with domestic legislation and international law.

83. The law on the press includes some highly restrictive provisions. These actions limit the sources of information available to the population and could be detrimental to the search for peaceful solutions. The meagre resources available to the media represent another obstacle to freedom of the press.

84. A number of violations of freedom of assembly have been brought to the attention of the Special Rapporteur. The situation in question arose in May 2001, in connection with the participation in meetings and press conferences of the party leaders belonging to the pro-Tutsi G-8 group, which supports Col. Epitace Bayaganakandi, a former candidate for the presidency of the transition government. Since the G-8 group is made up of officially recognized political parties that are involved in the Arusha peace process, the action taken by the authorities is clearly a flagrant violation of freedom of expression, a right that is recognized both by Burundian law and by the international texts of which Burundi is a signatory.

### 8. Violations of the right of trade unions to function freely

85. According to trade union officials, trade union freedom is not respected. They cite cases of arrest, arbitrary assignment, improper dismissal, violation of the right to strike, arbitrary detention and violation of freedom of expression and of assembly.

86. The Special Rapporteur was informed of the arrest of Idelphonse Ndagijimana, Secretary-General of the Office national des télecommunications trade union and a militant of the Parti pour le redressement national. He was arrested as part of the enquiry into the attempted coup d'état of 18 April 2001. He was detained at the Special Investigations Brigade (BSR) and, according to his family, remained without food for several days because his family was not permitted to deliver it to him directly. OHCHR contacted BSR but was not permitted to see him. Mr. Ndagijimana is currently being held in the Mpimba central prison. His detention since 21 April 2001 is illegal because he has yet to be brought before a judge in accordance with article 72 of the Code of Criminal Procedure. The trade unionists considered that his detention was intended to limit exercise of his trade union rights.

### 9. Violations of the rights of persons deprived of their liberty

87. The situation of persons deprived of their liberty continues to improve slowly thanks to the reforms of the justice system, the improvement in the conditions of detention in some prisons and the support of the Government, human rights associations and humanitarian organizations. However, in spite of everything, numerous irregularities persist.

#### Prisons

88. On 16 February 2001, the population in the prisons of Mpimba, Gitega and Ngozi was as follows: 6,337 detainees, of whom 4,641 (73.2 per cent) were awaiting trial and 1,669 had been sentenced. The corresponding percentages were 58.34 in Mpimba and 89.4 in Ngozi.

89. In May 2001, the total prison population in Mpimba was 2,585 — 2,525 men, 60 women, including 76 minors, and 12 infants. Of these, 1,085 had been sentenced — 285 of them to death. In Gitega, the total prison population was 1,630, of whom 447 had been sentenced (6 of them to death), plus 16 minors. In Ngozi, the number of detainees in the men's prison was 2,243, of whom 224 had been sentenced; the remainder — 90 per cent — were awaiting trial.

90. At the time of the Special Rapporteur's visit, there were 270 detainees from Ruyigi and Cancuzo in Ruyigi prison, although it was initially intended to hold 100. The prison's capacity was increased in 1993. The breakdown of detainees is as follows: 1,005 awaiting trial (5 of them women), 163 who have been sentenced (4 of them women), 2 infants, 5 minors (1 of whom has been sentenced), and 3 foreign detainees (1 of whom has already been sentenced); 99 per cent of these detainees are illiterate and destitute, and most are

detained for aggravated theft. Some of the detainees are the victims of irregularities. Some have spent two years without appearing before a judge; others — minors — have been handed down disproportionate sentences. For the most part the minors are not receiving visits from relatives because of the distance or because they are war orphans.

91. The total number of detainees is estimated to be about 9,000, of whom more than 75 per cent are untried. The judicial system overall still has insufficient material and human resources. The positive development in prison detention conditions, with a fall in the number of detainees and an increase in the past few months in the number of those sentenced, continued during March 2001. This development is the result of increased awareness on the part of the authorities. It is also the encouraging result of cooperation between the OHCDHB and the Burundian authorities. But there are still too many detainees who have been waiting years to be brought before the courts. The large number of those who are ill is to be explained by overcrowding, malnutrition, under-nourishment and inadequate health care. The improvements reported in the prisons in Mpimba, Ngozi, Ruyugi and Gitega are due mainly to appreciable assistance from ICRC.

92. The Special Rapporteur was informed of the case of Minani Ryazimbere, who has been in prison for almost 20 years and must be one of the oldest inmates of Mpimba prison. In an amnesty his sentence was commuted to 20 years' imprisonment. In view of his age, his state of health and the time he has already spent in prison (19 years), a conditional release of Minani Ryazimbere could be considered on humanitarian grounds.

93. Particular attention must also be given to the Ngozi men's prison where the very high number of men awaiting trial (90 per cent) indicates that the legal situation of detainees is moving much more slowly than in the other prisons.

94. Furthermore, it is reported that in mid-May 2001, the Burundi League for Human Rights (ITEKA) informed the authorities of Mpimba central prison that a number of those awaiting trial could be released on bail.[3] It is alleged that some 33 persons are eligible as the offences they are charged with are punishable by no more than five years in prison and because, as at the time of the ITEKA investigators' visit, they had spent more than one year in detention (nine of them had spent two years).

**Other detention centres**

95. In certain areas, brigade and police jails, despite the lack of human and material resources, efforts are being made to implement the new Code of Criminal Procedure correctly. The various provincial prosecution departments are making similar progress. However, in all too many others, the efforts being made are of a more timid nature or even non-existent; in those cases the number of detainees remains extremely high. Torture and ill-treatment continue to be practised on a regular basis. Furthermore, the majority of detainees are held in police custody for longer than is legally permissible. For example, on 11 April 2001, in the Special Investigation Brigade jail, 12 out of a total of 32 detainees were in that position. On 13 April 2001, there were 39 detainees in the Bujumbura public security police jails, of whom 11 were in that position, despite the fact that the prosecution service had visited just the day before and had said that 19 detainees could be released.

96. In many jails, for example, the one in Buyenzi area, conditions are deplorable: they are very poorly ventilated, damp and the stench is intolerable. In these cases, it would be desirable for detainees to receive a rapid hearing so that they could be released or transferred to other police jails or to prison.

97. Further, it is necessary to monitor pre-trial detentions so as to avoid irregularities in the functioning of the justice system. The Code of Criminal Procedure is often circumvented by holding individuals for successive periods of seven days. The time period can be further extended by transferring the detainee from one prison to another. Finally, some jails, notably those of the Special Investigations Brigade, are very difficult to access.

### 10. Children's right to special aid and assistance

98. In Burundi, children are drawn into conflicts. In fact, young people — men and women — from the age of 14 and sometimes younger ages receive so-called civic training in order to learn to defend themselves against the rebels. (The Special Rapporteur noted above that he attended one of these training sessions, which resembled military training and was conducted by the military.) They are called guardians of the peace

and are often used to carry supplies or weapons and to run errands. On the rebel side, it seems, the same phenomenon is to be found.

99. These young people, who for the most part have little experience in handling arms, inevitably become "human shields" during fighting. Also, malnourished but armed, they are not only victims but also perpetrators of violations by virtue of the acts of violence they commit.

100. Another phenomenon is the disturbing number of street children (6,000) and orphans. There are also children who are heads of families. The proportion of children who do not go to school has reached 40 per cent. Young children who, in the absence of shelter, share their mothers' prison cells is another disturbing phenomenon.

101. There are between 100 and 150 children in prison;[4] many of them spend two years in prison without their detention being confirmed or are sentenced to disproportionate terms, while for others the authorities have not even opened a file.

### 11. Women's rights

102. Women make up 52 per cent of the population. They are the most active members of the population in the rural areas, since most of the men are either fighting or dead. Furthermore, they have no right to inherit although they are responsible for the bulk of the production. They bear the brunt of the responsibility for raising the children, and they perform numerous activities for development. Women are the most affected by conflict. They are subject to numerous violations, and they do not have equal access to health care and education. Girls have limited access to education as they have to stay at home to work in the fields. Luckily the number of girls who do go to school is growing.

103. Several cases of domestic violence and rape during attacks by rebels and soldiers have been noted but they seldom come before the courts because of social and other pressures.

104. In a study of the legal status of Burundian women, which it published in May 2001, the Burundi Association of Women Lawyers compiled an inventory of gaps in the law and laws which treat women unequally; the study noted, among other things, the absence of legal texts on inheritance, matrimonial regimes and gifts. It also noted inequalities in the Nationality Act, the Labour Code of July 1993, the General Code of Imposts and Taxes of May 1990 and the Bankruptcy Act of 1934.[5]

105. The status of women has not undergone any significant development since my last visit to Burundi in July. The bill on inheritance and matrimonial regimes has still not been presented to the Council of Ministers and the hopes for the imminent creation of a structure that would embrace all women without distinction as to ethnicity, religion, social class or region have yet to be realized.

106. There are, however, a few bright spots in an otherwise rather gloomy picture. On 29 January 2001, the President of the Republic issued a decree appointing magistrates to head a number of courts, prosecution services and investigation services and appointed the first-ever woman Government Procurator, in Gitega. The Ministry for Social Action and the Advancement of Women has launched a project entitled "Support the promotion of gender equality", which seeks to remove the institutional, material and financial barriers to the advancement of women; the project has received the support of the United Nations Development Programme and the United Nations Development Fund for Women.

### 12. Violations of the rights of the Batwa minority

107. The situation of the Batwa minority deserves particular attention, but is unfortunately not yet receiving such attention. The Batwa currently account for about 1 per cent of the population. This minority has not participated in any of the discussions about or attempts to find solutions in Burundi, even though it has proportionally just as many victims as other groups. The Twa live in the background, without access to government services and particularly to education and health services, and they participate very little in political decision-making (there is only one Twa representative in the National Assembly).

## B. Economic, social and cultural rights

108. War and economic crisis are resulting in violations of economic, social and cultural rights, especially the right to health, housing, adequate nutrition and education. The many forced displacements, the looting of homes and property and

the frequency of attacks often make it impossible for parents to secure the welfare of their families. Moreover, the authorities cannot at present safeguard the economic and social rights of the poorest people. For these groups foreign aid, however inadequate, becomes the only way to survive.[6]

109. Vulnerability is at its highest among these groups, which include street children (5,000) AIDS orphans (230,000), children orphaned by the war (25,000), child heads of households (5,000), and minor children in prison (200). There are also 10,000 unaccompanied Burundian children among the refugees in the United Republic of Tanzania.

110. However, there has been a reduction in cases of malnutrition, which fell from 100,000 in March 2001 to 68,000 in May, and a relative decline in endemic diseases such as malaria (which fell from 340,000 cases in March 2001 to 239,000 in May 2001). This improvement is due to the good harvest.[7]

### 1. The right to health

111. Access to health care is also restricted by the absence or inadequacy of social insurance, the destruction of health facilities, the shortage of medical and paramedical personnel and the high cost of treatment and medicines.

112. The prevalence of HIV/AIDS and the number of those affected has increased as a result of the war, poverty and the lack of training and information. Women have also become more vulnerable to the disease. Treatment is beyond the reach of most of them, and especially for women without partners, who already have to bear the cost of running a household.[8] This situation is causing concern, and the lack of an effective policy on treatment and prevention may have serious economic and social consequences. There is now a free and anonymous tracing programme, and this should help to improve prevention.

113. Cases of malaria have fallen off, but the disease is still widespread, and the steps taken to control it still fall short of what is required.

114. Many of the health professionals whom the Special Rapporteur has met say that the cost of treatment in public health facilities has been underestimated[9] and that this has brought about a reduction in the range of treatments available in these establishments. International assistance in the area of health care has resumed, but is not very widespread.

### 2. The right to education

115. Education is one of the best routes to promote and safeguard human rights. Such education must be carried on in families and in the appropriate establishments. Since the social fabric has been torn, families are having difficulty in fulfilling their educational role. The same is true of society at large. Schools are now the only institutions able to give effect to the right to education.

116. However, the armed conflict and the economic crisis have had a negative impact on schools, and the right to education has been seriously affected as a result. Levels of school enrolment have fallen because of the destruction of school equipment and infrastructure, the shortage of teachers, the frequent large-scale displacements of population and the increase in the school registration fee, or "minerval", to which various other charges are added. In some schools pupils have dropped out because of illness and food shortages.[7]

117. Burundi has 6,000 students in higher education. Following an intensive school attendance campaign in primary and secondary schools during the 1980s, and because of the shortage of qualified teachers, higher education has had to absorb an increasing number of students, not all of whom have received adequate preparation. Private universities have been set up, but the hopes placed in them have not been realized, for lack of teaching staff. The solution would be to train university level trainers, who in turn could train qualified secondary schoolteachers, but it would take 10 years to remedy the situation.

## C. The justice system and a State based on the rule of law

118. Little has changed in the judicial system since the Special Rapporteur's last report to the General Assembly.[10] In some areas, there has even been a marked slowdown, if not a regression. Admittedly, new provisions have been added to the Code of Criminal Procedure promulgated in January 2000, to improve the operation of the judicial system. These relate to the new statute for the judiciary, introduced in February 2000, the law on the procedures and operation of the

Supreme Council of the Judiciary, promulgated on 29 June 2001, and the new statute for assistant judges, as well as draft regulations for the legal profession.

119. Taken together, these reforms should ensure greater independence for the judiciary and the justice system. But these sectors are still prey to corruption, lack of resources, insecurity and pressures and interference of various kinds. The operation of the justice system is also hamstrung by the many resignations of judges, concerned that the implementation of the Arusha Agreement may have an adverse effect on their careers.

120. The result is tremendous overcrowding in the prisons as a result of the upsurge in the number of pre-trial detainees, especially those associated with the 1993 crisis, in spite of all the efforts made to improve prison conditions. Sentences are sometimes disproportionate, especially in the case of minors, and there are gaps in the administration of justice (lack of defence counsel and inordinately lengthy court procedures, owing to repeated failures by witnesses and civil claimants to appear in court).

121. By contrast with previous years, this year the Criminal Chambers, which are competent to try crimes committed during the 1993 events, have held only one plenary session, and in July the itinerant sessions they were scheduled by the Ministry of Justice to hold in 2001 had still not begun. The extra-sessional activities of the Criminal Chambers have continued normally, with legal support from the Office of the United Nations High Commissioner for Human Rights. In total, the three Criminal Chambers have dealt with 155 cases; they have handed down only 20 judgements (12 per cent) and have deferred about 88 per cent of the cases to a later date. The majority of those convicted, 12 in all, or 60 per cent of the total, were sentenced to death or life imprisonment. Seven people, or 35 per cent of those convicted, were released. An improvement took place in the number of cases heard by the courts when the sixteenth session of the Criminal Chambers began on 21 May 2001.

122. Since January 2001, the justice system has made little progress. The lack of momentum is due to the political climate, which is influenced by the developments in the peace process, but also to the desperate lack of resources in the courts, in spite of the efforts made to provide them with material and human resources. There has been a drop in the numbers of those released on parole, although 50 prisoners aged over 70, and about 20 minors, have been released. The itinerant sessions were suspended because of the lack of security.

123. The smooth operation of the justice system is put at risk by the frequent adjournments caused by the non-appearance of civil claimants and witnesses, and the disruption of transport for lawyers working in the field. At Bujumbura, out of 11 scheduled hearings, only seven were actually held, because one member of the bench was not available. Steps have been taken by the Ministry of Justice to ease overcrowding in the prisons, including prison inspections and the strict enforcement of the new Code of Criminal Procedure in order to put an end to arbitrary or prolonged detention during the pre-hearing stage, and these measures should be encouraged. Steps should also be taken to monitor criminal hearings through the programme of itinerant and regular sessions of the Criminal Chambers.

124. The Legal Assistance Programme (LAP) of the OHCDHB continued to operate effectively during February, with contributions from national lawyers working in the three criminal courts (Bujumbura, Gitega and Ngozi), and from the team working on the programme. During January 2001, a training seminar on the international human rights instruments was organized for military judges. The lower level judges, and the prison warders, have also been given training.

125. The work of the LAP lawyers and the training courses for judges are continuing to have a positive impact on the promotion and defence of human rights. Trials are conducted with greater regard for the law, and life imprisonment or part-time prison terms are increasingly taking the place of death sentences. However, it is a matter of regret that capital punishment is still in force in Burundi, in spite of the efforts of OHCDHB to encourage the authorities and the judiciary to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death sentence,[11] and to revise the Penal Code.

## D. Human rights promotion and education

126. The Governmental Commission on Human Rights, created on 11 May 2000, officially began functioning on 25 April 2001. Its entire membership is

made up of representatives of the President of the Republic, the two Vice-Presidents and six Ministries including the Ministries of the Interior and Defence. The decree creating the Commission gives it a wide mandate. However, it does not meet the basic requirements, demanded of national human rights institutes, namely a founding constitutional or legislative text, independent appointment procedures and a pluralist and representative membership. Moreover, its ineffectiveness when faced with specific cases brought to its attention would seem to suggest that it is having operational and/or resources difficulties. Finally, it is not clear what role it will play in the universe of already existing human rights structures.

127. It is, however, encouraging to note that there is a greater awareness of the need to respect and promote human rights in the country. Seminars, training sessions and days of reflection have been organized with the support of OHCDHB, other United Nations agencies, the Ministry of Human Rights and human rights associations. It should be noted that a second children's festival was organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and by OHCDHB from 19 to 21 January 2001; 600 children, including children attending and not attending school, participated. Days of reflection on the theme of "Establishment of a culture of peace in Burundi" were held under the auspices of the UNESCO chair in peace education at the University of Burundi from 5 to 7 March 2001, in collaboration with OHCDHB. On 25 and 26 April 2001, a seminar/workshop was held in the context of the promotion of women's rights, on the topic of violence against women during periods of conflict. The workshop was organized by the Burundian section of the Women's International League for Peace and Freedom (WILPF). Finally, training of national human rights observers began on 21 May 2001, with the session topic being investigation techniques for places of detention.

# IV. Observations

128. The situation of the Burundian population has not improved a great deal and has even worsened in certain areas. The population's greatest hope is for peace; all rights other than the right to life are, in the final analysis, of lesser importance. Any measures which contribute to peace will be well received but until the Arusha process clearly points the way to peace, the peoples attitude towards it will be mixed.

129. The human rights situation has not improved a great deal since January 2001. In order to reverse that trend and promote greater respect for human rights, measures must be taken to lessen the impact of the four factors that contribute to human rights violations: war; the deteriorating economy and declining production; inadequate education and training; and social pressures and the influence of tradition on behaviour. Reducing the number of violations and lessening the frustration level will contribute to the prevention of conflict and the establishment of a genuine rule of law in Burundi.

130. It might therefore be desirable to find new solutions for peace or at least for achieving a truce which will allow the armed groups to join in the negotiation process. That alone would reduce the number of victims of the conflict and would create the conditions for a march towards peace and allow the population to join in the peace process.

131. The Arusha process as it currently stands has led to progress even if some failings have been identified and certain reservations expressed. It has the merit of having brought the majority of the political class together around an agreement and has led to the designation of the transition leadership. There remains the issue of the ceasefire which requires negotiations between the transition Government and the armed groups. Movement in that direction must come fairly quickly, otherwise the achievements of the first phase could be compromised. The result might be renewed and bloodier conflict, with the belligerents on all sides adopting much more radical positions.

132. During her mission the Special Rapporteur was informed that the Government had taken measures to ensure that persons under 18 years old were not recruited into the army. That measure must actually be applied, by everyone and must be extended to the police because those young people, armed, inadequately trained and with no guarantees for their future, could pose a real threat to civilians and an obstacle to peace.

133. Much has been done for human rights promotion and education by the Government, civil society and the international community, in particular OHCHR. Yet behaviour and the results of those efforts do not always meet the expectations or reflect the commitments and investments made. As a result the chances of creating a

truly civil society currently seems slim given the influence that ethnic, social, regional and political differences and even gender can have on behaviour.

134. Increased awareness of human rights issues in Burundian society and the improvement that has been observed in the field of justice can be explained by the efforts made by all those involved (OHCHR, bilateral cooperation, Ministries of Human Rights and Justice, humanitarian and human rights organizations and associations). The Special Rapporteur thanks five Burundian human rights associations, the Burundian League for Human Rights (ITEKA), the Collective of Burundian Women's Associations and Organizations, the Association of Women Lawyers, the Abakenyezi Duhagurukire Iterambere and the Burundian League for Children and Young People for their submission and encourages other human rights associations to follow their example.

135. The transition period which is now beginning and implementation of the Agreement require continuous and strengthened efforts in the areas of monitoring, protection and promotion in order to prevent human rights violations and to guarantee a lasting peace. To achieve that objective Burundi must develop its own human rights capabilities. Support from OHCHR will continue to be necessary to help it reach that goal and to plan for the establishment in the near future of a national human rights institution. OHCDHB must make further efforts to support associations and take a greater interest in matters relating to women's and children's rights as well as economic, social and cultural rights.

136. Women are increasingly aware of the role that they should play in society, in particular in urban areas. Their participation as permanent observers in the Arusha negotiations and the proposals made by their delegation are proof of that awareness. There are several women's associations which are working for women and peace, but they are limited by economic factors and political prejudice. Peace is essential so that the fight against discrimination and quality of which women and children are victim can finally begin.

# V. Recommendations

137. In the hope of helping to improve the human rights situation in Burundi, the Special Rapporteur reiterates the recommendations already made in her reports to the Commission on Human Rights and the General Assembly[12] and reinforces them with further recommendations to the parties to the conflict, the Burundian authorities and the international community.

## A. To the parties to the conflict

138. The Special Rapporteur supports the facilitation team in its efforts to advance the peace process, in particular the most recent measures to extricate Burundi from the political impasse and lead it along the path to peace.

139. Since peace currently is a sine qua non for safeguarding human rights in Burundi and the best guarantee of sustainable development in the interests of all concerned, the Special Rapporteur urgently invites all the parties to the conflict to overcome their antagonism and to do all they can to achieve peace through negotiated solutions thereby placing the interests of the Burundian people above all others.

140. The Special Rapporteur earnestly entreats them to respect the people's right to life and the right of children not to be subjected to violence and to protect them from torture and other cruel, inhuman or degrading punishment or treatment. She urges them to comply with the provisions of international humanitarian law and to avoid the destruction of civilian infrastructure (schools, health centres and water points).

141. The Special Rapporteur condemns the belligerents' use of children during armed conflicts. She therefore strongly recommends that the ban on the recruitment into the army of young people under the age of 18 be implemented and extended to the police force; since many young people under 18 are currently recruited, police officers are inexperienced. She urges armed groups to do likewise.

142. In order to foster a climate of peace, she recommends that the belligerents not yield to the temptation of encouraging civilians, especially young people, to acquire weapons.

## B. To the Burundian authorities

143. The Special Rapporteur commends the Burundian civilian, administrative, political, judicial and even military authorities for the efforts made to bring

Burundi closer to peace. She is, however, worried at the emphasis placed on self-defence and arming of civilians and invites all Burundians to stop dwelling on what their deficiencies are and to focus instead on what they have in common.

144. In order to address the issues of temporary immunity and impunity and help advance national reconciliation, she recommends that the commissions provided for in the Arusha Agreement commence work forthwith.

145. In order to further the promotion of human rights and the prevention of conflicts, she earnestly hopes that the relevant provisions of the Arusha Agreement, including those on the ombudsman, will be implemented.

146. The Special Rapporteur condemns all forms of torture or other cruel, inhuman or degrading maltreatment of suspects who, by law, are presumed innocent until a competent court decides their fate. She also considers it unacceptable that victims of offences should be permitted to take their revenge, particularly on detainees who are under police protection. She therefore invites the Burundian Government to adopt more determined action against torture and unlawful detention, especially in military camps. She would also like to remind the authorities that they must respect the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,[13] which Burundi has signed and ratified. Victims of torture must be able to obtain appropriate compensation within a reasonable period of time.

147. The women of Burundi have already proved their commitment to the quest for peace. Their determination to participate in the Arusha peace process in which they ultimately obtained observer status and the proposals they have made to that end, are evidence thereof. In order to nurture a culture of peace and reconciliation, it would be advisable not only to make the most of their contribution within the family and the community, but also to associate them with the implementation of the Arusha Agreement and encourage them to develop their potential and to participate fully in political and economic decision-making bodies.

148. In order to prevent disputes over land, which are likely to grow in scale with the end of the war, there is an urgent need to devise and take steps to promote land management and to introduce an appropriate Land Code.

## C. To the international community

149. The Special Rapporteur appreciates the efforts of the Secretary-General, the General Assembly and the Security Council to enhance the protection of civilians and more particularly the most vulnerable groups — children, women and the elderly — who are victims of the armed conflicts in Burundi and the Great Lakes region.

150. She supports the work of national and international legal and humanitarian associations which have helped to alleviate the plight of victims and persons in custody.

151. She calls upon the international community to persist in its efforts to persuade all the belligerents to abandon their attempts to resolve matters through force of arms and to sit down at the negotiating table.

152. She again emphasizes the need to do everything possible to counter the proliferation of and illicit traffic in arms in this Great Lakes region, which presents so many dangers.

153. In order to further the search for peace in the subregion and prevent conflicts from spreading it would be desirable for the Arusha and Lusaka Agreements to be implemented in a coordinated manner (for example, the provisions on the demobilization and reintegration of combatants). Furthermore, she supports the idea of holding a conference of countries in the Great Lakes region, which would afford the possibility of considering concerted solutions to the problems affecting those countries.

154. In order to build on the achievements of the various negotiations and meetings, it is important to give the efforts of the facilitator, President Mandela, every possible form of support, including the backing of a technical commission.

155. The international community must bring all its influence to bear to make the belligerents understand that they must respect the life of civilians, international humanitarian law and civilian infrastructure and allow the stricken population access to humanitarian relief. Furthermore, they must on no account involve children in the armed conflict.

156. In order to alleviate poverty and help the country to meet its human rights commitments, the Special Rapporteur recommends that donors make available the funds pledged at the Paris Conference in December 2000.

157. In order to enhance the efficiency of OHCDHB in its role of protecting and promoting human rights and assisting Burundi to expand its national capacities in that area, she encourages OHCDHB to continue its policy of awareness raising and oversight of human rights associations, especially those defending women's rights and requests the international community to increase the resources at its disposal.

*Notes*

[1] Contribution by five Burundian rights associations — Burundian League for Human Rights (ITEKA), the Collective of Burundian Women's Associations and Organizations (CAFOB), the Association of Women Lawyers (AFJ), Abakenyezi Duhagurukire Iterambere (ADI), and the Burundian League for Children and Young People (LIBEJEUN) — to the Report of the Special Rapporteur, Bujumbura, July 2001.

[2] See General Assembly resolution 2200 A (XXI), annex.

[3] In implementation of article 75 of the new code of criminal procedure.

[4] Some 75 per cent of these children are in prison for aggravated theft, and 15 per cent for participation in armed bands.

[5] Contribution by five Burundian human rights associations to the report of the Special Rapporteur on the human rights situation in Burundi, op. cit., p. 18.

[6] Source: United Nations Children's Fund, Burundi.

[7] Source: Office for the Coordination of Humanitarian Affairs, Burundi.

[8] Health insurance contributions are FBu 500 per family per year.

[9] The cost of dual-agent therapy is about FBu 96,000, and triple-agent therapy FBu 230,000, whereas an average civil servant's salary is FBu 30,000.

[10] A/55/358.

[11] General Assembly resolution 44/128, annex.

[12] E/CN.4/2001/44 and A/55/358.

[13] General Assembly resolution 39/36, annex.